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HAYNES AND BOONE, LLP			VAUGHAN, MICHAEL R	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/520,950	KNOX ET AL.	
	Examiner	Art Unit	
	MICHAEL R. VAUGHAN	2431	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 22 January 2009.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 40-77 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 40-77 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 1/22/09 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____.

DETAILED ACTION

The instant application having Application No. 10/520,950 is presented for examination by the examiner. Claims 40 and 75 have been amended. Claims 40-77 are pending.

Response to Amendment

Drawings

The new drawings are accepted. The objection is hereby withdrawn.

Claim Objections

Claims 40-77 are objected to because of the following informalities:

Through these claims the optical disc of the independent claim is referred as "the disc" in both the independent and dependent claims. Examiner requests corrections to all of these improper antecedent bases.

Specification

Currently filed abstract and specification amendments are sufficient to withdraw the objection.

Response to Arguments

Applicant's arguments filed 1/22/09 with respect to claims 65-72 have been fully considered but they are not persuasive.

Claim 65, using the phrase "data representative of m primary tracks". This ambiguous phrase does not necessarily specify the number of tracks as Applicant's arguments imply. That is one possible interpretation; however, other possible interpretations of representative data include header information, encrypted data, pointers, etc. The point is, this broad term can take on many interpretations. One could argue that it means data which presents the music in the track, or which presents an encrypted/compressed version of the music. The word representative is very loose in its application. As such, Examiner finds support for the claim's broad limitations in Babowicz. Babowicz teaches generating primary data representative of m primary track(s) for the optical disc on page 7, line 5 as the music content of 204 the program area. Even the TOC corresponds to those data tracks. The TOC, and the music itself are both data representative of the tracks. Babowicz has support similarly for the alternative representative data on page 8, lines 14-15. Here encrypted data (data representative of the music tracks) are stored. And lastly the TOC indicates to the optical reader there are only those tracks which correspond to those found in the 204 program area. Optical disc data reader covers all types of readers. As broadly claimed, Examiner finds no limitation to claim 65 which is not taught or suggested by Babowicz.

Applicant's arguments with respect to claims 40-65 and 75-77 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 65-70, 73, and 74 are rejected under 35 U.S.C. 102(e) as being anticipated by Babowicz (PCT WO 2002/075735 A1).

As per claim 65, Babowicz teaches a method of generating data for writing onto an optical disc, the method comprising:

generating primary data representative of m primary track(s) for the optical disc (page 7, line 5; Fig 4, 400);

generating alternate data representative of n alternate track(s) for the optical disc (page 8, lines 14-15; Fig 4, 408; and

assembling a table of contents (TOC) for the optical disc (Fig 4, 404), the TOC containing disc access control information which, when written to an optical disc, indicates to an optical disc data reader that there are m tracks in total written upon that optical disc (page 5, lines 20-25; Fig 9).

As per claim 66, Babowicz teaches wherein the disc access control information further indicates to a CD-DA player that there are m tracks in total written upon that optical disc, the disc access information causing a different m of the $m+n$ tracks to be accessible to an optical disc data reader than the m tracks which are accessible by a CD-DA player (page 7, line 5-10). Babowicz explicitly references use of the industry standard for playing CDs.

As per claim 67, Babowicz teaches writing the generated primary and alternate data to an optical disc (Fig. 4, 400 and 408); reading back the data thus written, including an unmodified TOC including unmodified disc access information for all of the $m+n$ tracks, to a data analysis device [must be read in, in order to modify contents] (Fig 4, between 400-402) ; and editing the unmodified TOC so as to produce a modified TOC containing the said disc access control information indicative to a CD audio player of the presence of the m primary tracks, and to an optical disc data reader of the presence of n alternate tracks and $m-n$ primary tracks (Fig 4, 404).

As per claim 68, Babowicz teaches wherein the unmodified TOC further comprises a plurality of track number indicators, the method further comprising editing the unmodified TOC so as to alter the track number indicators for at least some of the primary tracks (page 17, line 11).

As per claim 69, Babowicz teaches the step of editing the unmodified TOC comprises setting to zero the track number indicators of those primary tracks which are

to be altered, so that an optical disc data reader no longer detects the presence of the said altered primary track number indicator(s) (page 17, line 11).

As per claim 70, Babowicz teaches the step of editing the unmodified TOC comprises deleting those parts of the TOC relating to at least some of the m primary tracks [setting value to 0 constitutes deletion] (page 17, line 11).

As per claim 73, Babowicz teaches the step of editing the TOC comprises replacing the start time of the, or at least one of the, primary tracks (page 5, lines 22—5) with the start time of an associated alternate track (page 12, lines 19-23).

As per claim 74, Babowicz teaches the unmodified TOC further includes a total track quantity entry, the step of editing the unmodified TOC comprising reducing the total quantity of tracks in the total track quantity entry so that it indicates, in the modified TOC, only the number of primary tracks present (Fig 4, 404).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 40-64, and 75-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Babowicz in view of USP 6,988,206 to Alcalay et al., hereinafter Alcalay.

As per claim 40, Babowicz teaches an optical disc comprising:
at least one primary track (Fig 1, 204);
at least one alternate track (Fig. 1, 208); and
disc data access information, stored upon the disc, and which is read and utilized only by an optical disc data reader, the disc data access information being such as to prevent location of the, or at least one of the, primary track(s), when the disc is read by the optical disc data reader, and to direct the optical disc data reader instead to the, or an associated, alternate track (page 3, lines 10-13, and 7, lines 10-15). Babowicz is silent in disclosing that both the primary track and alternate track are in a single session. Alcalay, teaches a similar system as Babowicz including having the primary track and the alternate track in two different sessions as well. Alcalay teaches this is an alternative to having both the primary and second track in one session (col. 2, lines 55-63; and col. 7, lines 30-35. Alcalay teaches one can place the alternative tracks in sub-code channels, the lead-in, and the lead-out areas of the session. Alcalay's invention, both the single session embodiment and the multi-session embodiment achieve the same results. Therefore it appears the choice of putting the alternative and primary tracks together in one session is a design choice. As such, one of ordinary skill in the

art could choice either method since both methods are known. Substituting equivalent known method is within the ordinary capabilities of one of ordinary skill in the art.

As per claim 41, Babowicz teaches there are a plurality of primary tracks and a plurality of alternate tracks, at least one of the primary tracks having an associated alternate track (page 5, lines 14-18).

As per claim 42, Babowicz teaches the, or at least one, primary track is an audio track encoding audio information capable of playback by a CD audio player (pg. 5, line 13), and wherein the, or at least one, alternate track is a data track encoding audio information capable of playback by an optical disc data reader (pg. 5, lines 20-21).

As per claim 43, Babowicz teaches the audio information encoded within a primary track on the optical disc, when played back by a CD audio player, corresponds substantially with the audio information encoded within an associated alternate track when played back by an optical disc data reader (pg.5 , lines 15-21).

As per claim 44, Babowicz teaches the audio information encoded within a primary track on the optical disc, when played back by a CD audio player, is of different length and/or different audio content to the audio information encoded within an associated alternate track when played back by an optical disc data reader (pg. 3, line 11).

As per claim 45, Babowicz teaches each of the primary tracks has an associated alternate track (pg. 5, lines 15-17).

As per claim 46, Babowicz teaches a table of contents (TOC) which includes the disc data access information that is read only by the optical disc data reader (pg. 11, lines 15-20).

As per claim 47, Babowicz teaches there are m [a number] primary tracks and n [a number] alternate tracks, the disc access information indicating to an optical disc data reader that there are only m tracks in total upon the optical disc (page 5, lines 24-25).

As per claim 48, Babowicz teaches the TOC further comprises disc audio access information that is readable by a CD audio player (page 7, line 7).

As per claim 49, Babowicz teaches the disc audio access information indicates to a CD audio player that there are only m tracks in total upon the disc, the disc data access information causing a first m of the m primary and n alternate tracks to be accessible to an optical disc data reader and the disc audio access information causing a second, different m of the m primary and n alternate tracks to be accessible by a CD audio player (page 7, lines 5-10). Babowicz explicitly references use of the industry standard for playing CDs.

As per claim 50, Babowicz the disc audio access information indicates to a CD audio player that there are m primary tracks only, and wherein the disc data access information indicates to an optical disc data reader that there are n alternate tracks and (m-n) primary tracks (page 5, lines 2—25). Examiner acknowledges Applicant's use of the m and n variables as a way to logically reference the tracks in a clear manner. However no patentable weights is given to these values because they are used to

merely explain that CD players access only the m tracks and the CD readers access only alternate tracks.

As per claim 51, Babowicz teaches the disc access information is included within a table of contents (TOC) of the optical disc, the TOC having a track number indicator indicative of the track number for each of the tracks on the disc (Fig 9), and wherein the track number indicator for the or each primary track which has an associated alternate track is set to zero (pg. 17, line 11).

As per claim 52, Babowicz teaches the disc access information is included within a table of contents (TOC), the TOC including entries for the or each alternate track (pg. 7, lines 18-23) for which there is a corresponding primary track but having no entries for each such corresponding primary track (pg. 8, lines 15-17).

As per claim 53, Babowicz teaches the disc access information is included within a table of contents (TOC), the TOC including timing entries indicative of a start time for the tracks (page 5, lines 22-25), and wherein the start time in the timing entry of at least one of the primary tracks is replaced with the start time of its corresponding alternate track (page 12, lines 19-23).

As per claim 54, Babowicz teaches the disc access information is included within a table of contents (TOC) (Fig 9), the TOC comprising track number entries for each of the tracks on the optical disc (Fig 6) Babowicz is silent in explicitly disclosing the track number entry or entries in the TOC for the or each primary track are swapped with the respective track number entry or entries for the or each of the corresponding alternate tracks. However digital music is selected by numbers which indicates tracks. Whether

it is from a CD or play list, it is notoriously well-known in the art that digital music is selected via track number when playing on a PC from some medium. Therefore it would have been obvious to give the alternate tracks numbers for identification to the user. As such, giving the tracks numbers which correlate to those on the back of the CD album cover would be beneficial to the user so he/she would know exactly which song they were selecting to play. It would have been obvious to one of ordinary skill at the time of the invention to modify Babowicz's invention to swap the track number of the alternate date with the primary data so that a user when playing the protected tracks would be able to identify them for play.

As per claim 55, Babowicz teaches the TOC includes a total track quantity entry indicative of the total number of tracks upon the disc, and wherein that total track quantity entry indicates only the total number of primary tracks upon the disc (Fig 9).

As per claim 56, Babowicz teaches the track number indicator for the or each alternate track which has a corresponding primary track is set to indicate the track number of the corresponding primary track (page 5, lines 23-25).

As per claim 57, Babowicz teaches substitute disc access information stored upon the disc in encrypted form, the substitute disc access information, when decrypted, being usable by an optical disc data reader, when so decrypted, to permit location of the primary track(s) (page 5, lines 14-18).

As per claim 58, Babowicz teaches computer program code upon the disc and which, when executed, causes a computer which includes the optical disc data reader

to access and decrypt the substitute disc access information, and to cause the optical disc data reader then to use the decrypted disc access information to locate tracks upon the disc (page 8, lines 5-20).

As per claim 59, Babowicz teaches the substitute disc access information permits location only of the primary tracks once the said substitute disc access information has been decrypted (page 5, lines 20-22).

As per claim 60, Babowicz teaches substitute disc access information is stored upon the disc as an alternate track (page 5, lines 20-22).

As per claim 61, Babowicz teaches at least one of the alternate tracks comprises compressed or encrypted data (page 8, line 13).

As per claim 62, Babowicz teaches the compressed data represent an audio signal encoded to a standard such as MP3 (page 8, line 15).

As per claim 63, Babowicz teaches at least one of the alternate tracks, incorporates a digital rights management technique (page 8, lines 19-20).

As per claim 64, Babowicz teaches at least one of the alternate tracks, incorporates copy protection (page 5, line 24).

As per claim 75, Babowicz teaches a method of controlling access by an optical disc data reader to an optical disc having at least one primary track and at least one alternate track (page 8, lines 14-15), the method comprising the step of preventing the location of the, or at least one of the, primary track(s) when the disc is read by the said optical disc data reader (page 7, line 5), and directing the data reader instead to the, or an associated, alternate track [data within session 2] (page, 7, lines 5-10). Babowicz is

silent in disclosing that both the primary track and alternate track are in a single session. Alcalay teaches a similar system as Babowicz including having the primary track and the alternate track in two different sessions as well. Alcalay teaches this is an alternative to having both the primary and second track in one session (col. 2, lines 55-63; and col. 7, lines 30-35. Alcalay teaches one can place the alternative tracks in sub-code channels, the lead-in, and the lead-out areas of the session. Alcalay's invention, both the single session embodiment and the multi-session embodiment achieve the same results. Therefore it appears the choice of putting the alternative and primary tracks together in one session is a design choice. As such, one of ordinary skill in the art could choice either method since both methods are known. Substituting equivalent known method is within the ordinary capabilities of one of ordinary skill in the art.

As per claim 76, Babowicz teaches method further comprising allowing the location only of the primary track when the disc is read by a CD-DA player (pg. 5, lines 20-25).

As per claim 77, Babowicz teaches the disc has m primary tracks and n alternate tracks, the method further comprising permitting access to the n alternate track(s) and $(m-n)$ of the primary tracks when the disc is accessed by an optical disc data reader (page 5, lines 16-26), and

permitting access to the m primary tracks when the said disc is accessed by a CD-DA player (page 8, lines 1-2). Examiner acknowledges Applicant's use of the m and n variables as a way to logically reference the tracks in a clear manner. However no

patentable weights is given to these values because they are used to merely explain that CD players access only the m tracks and the CD readers access only alternate tracks.

Claims 71 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Babowicz (PCT WO 2002/075735 A1).

As per claim 71, Babowicz teaches at least one of the m primary tracks has a corresponding alternate track (page 5, lines 20-25). Babowicz is silent in expressly disclosing the step of editing the unmodified TOC further comprising replacing the track number indicators of each of the alternate tracks which has a corresponding primary track with the track number indicator of that corresponding primary track in the unmodified TOC. However digital music is selected by numbers which indicates tracks. Whether it is from a CD or play list, it is notoriously well-known in the art that digital music is selected via track number when playing on a PC from some medium. Therefore it would have been obvious to give the alternate tracks numbers for identification to the user. As such, giving the tracks numbers which correlate to those

on the back of the CD album cover would be beneficial to the user so he/she would know exactly which song they were selecting to play. It would have been obvious to one of ordinary skill at the time of the invention to modify Babowicz's invention to replace the track number of the alternate date with the primary data so that a user when playing the protected tracks would be able to identify them for play.

As per claim 72, Babowicz is silent in explicitly disclosing the track number entry or entries in the TOC for the, or each, primary track are swapped with the respective track number entry or entries for the or each of the corresponding alternate tracks. However digital music is selected by numbers which indicates tracks. Whether it is from a CD or play list, it is notoriously well-known in the art that digital music is selected via track number when playing on a PC from some medium. Therefore it would have been obvious to give the alternate tracks numbers for identification to the user. As such, giving the tracks numbers which correlate to those on the back of the CD album cover would be beneficial to the user so he/she would know exactly which song they were selecting to play. It would have been obvious to one of ordinary skill at the time of the invention to modify Babowicz's invention to swap the track number of the alternate date with the primary data so that a user when playing the protected tracks would be able to identify them for play.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL R. VAUGHAN whose telephone number is

(571)270-7316. The examiner can normally be reached on Monday - Thursday, 7:30am - 5:00pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. R. V./

Examiner, Art Unit 2431

/Syed Zia/

Primary Examiner, Art Unit 2431